

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-02116-EGS**

FREEDOM WATCH, INC. v. U.S. DEPARTMENT OF
JUSTICE et al

Assigned to: Judge Emmet G. Sullivan

Case: 1:18-cv-02657-EGS

Cause: 05:552 Freedom of Information Act

Plaintiff

FREEDOM WATCH, INC.

Date Filed: 09/11/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

represented by **Larry E. Klayman**
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Plaintiff

FRANCIS SCHAEFFER COX

18cv2657

represented by **Larry E. Klayman**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

U.S. DEPARTMENT OF JUSTICE

represented by **John Moustakas**
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Melanie Dyani Hendry
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TERMINATED: 08/07/2019

Defendant

**FEDERAL BUREAU OF
INVESTIGATION**

represented by **John Moustakas**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melanie Dyani Hendry
(See above for address)
TERMINATED: 08/07/2019

Defendant

**BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES**

represented by **John Moustakas**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melanie Dyani Hendry
(See above for address)
TERMINATED: 08/07/2019

Defendant

**EXECUTIVE OFFICE OF U.S.
ATTORNEYS**
18cv2657

represented by **John Moustakas**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melanie Dyani Hendry
(See above for address)
TERMINATED: 08/07/2019

Date Filed	#	Docket Text
09/11/2018	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 0090-5683681) filed by FREEDOM WATCH, INC.. (Attachments: # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons), # <u>6</u> Civil Cover Sheet). (Klayman, Larry) (Attachment(s) # <u>6</u> replaced on 9/13/2018. (znmw). (Entered: 09/11/2018)
09/11/2018		Case Assigned to Judge Emmet G. Sullivan. (zmd) (Entered: 09/12/2018)
09/13/2018	<u>2</u>	STANDING ORDER: The parties are directed to read the attached Standing Order Governing Civil Cases Before Judge Emmet G. Sullivan in its entirety upon receipt. The parties are hereby ORDERED to comply with the directives in the attached Standing Order. Signed by Judge Emmet G. Sullivan on 09/13/18. (Attachment: # <u>1</u> Exhibit 1) (mac) (Entered: 09/13/2018)
09/13/2018	<u>3</u>	SUMMONS (5) Issued Electronically as to BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent) (zmd) (Entered: 09/13/2018)
10/23/2018	<u>4</u>	Consent MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE (Hendry, Melanie) (Entered: 10/23/2018)
10/25/2018		MINUTE ORDER granting <u>4</u> consent motion for extension of time to file answer to complaint. Defendants shall therefore answer or otherwise respond to plaintiff's complaint by no later than November 7, 2018. Signed by Judge Emmet G. Sullivan on 10/25/2018. (lcegs3) (Entered: 10/25/2018)
10/25/2018		Set/Reset Deadlines: Defendant Answer due by 11/7/2018. (mac) (Entered: 10/25/2018)
11/07/2018	<u>5</u>	MOTION to Dismiss , MOTION for Summary Judgment by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Declaration of David M. Hardy, # <u>3</u> Declaration of Joseph E. Gerstell, # <u>4</u> Declaration of Sophia Y. Kil)(Hendry, Melanie) (Entered: 11/07/2018)
11/20/2018	<u>6</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>5</u> MOTION to Dismiss MOTION for Summary Judgment by FREEDOM WATCH, INC. (Klayman, Larry) (Entered: 11/20/2018)
11/27/2018		MINUTE ORDER granting <u>6</u> plaintiff's motion for extension of time. Plaintiff shall therefore respond to defendants' motion to dismiss/summary judgment by no later than December 12, 2018. Signed by Judge Emmet G. Sullivan on 11/27/2018. (lcegs3) (Entered: 11/27/2018)

11/27/2018		Set/Reset Deadlines: Plaintiff Response To Defendants' Motion To Dismiss/Summary Judgment due by 12/12/2018. (mac) (Entered: 11/27/2018)
12/12/2018	<u>7</u>	Memorandum in opposition to re <u>5</u> MOTION to Dismiss MOTION for Summary Judgment filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit Book Jacket, # <u>2</u> Exhibit Successful Facsimile Confirmation, # <u>3</u> Exhibit Schaeffer Cox's Opp to Defendants' Motion for Summary Judgment and Motion to Dismiss, # <u>4</u> Exhibit Declaration of Schaeffer Cox)(Klayman, Larry) (Entered: 12/12/2018)
12/18/2018	<u>8</u>	MOTION for Extension of Time to File Response/Reply as to <u>5</u> MOTION to Dismiss MOTION for Summary Judgment by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE (Hendry, Melanie) (Entered: 12/18/2018)
12/18/2018	<u>9</u>	RESPONSE re <u>8</u> MOTION for Extension of Time to File Response/Reply as to <u>5</u> MOTION to Dismiss MOTION for Summary Judgment filed by FREEDOM WATCH, INC.. (Attachments: # <u>1</u> Exhibit Exhibit 1)(Klayman, Larry) (Entered: 12/18/2018)
12/19/2018		MINUTE ORDER granting over objection <u>8</u> defendants' first motion for an extension of time to file its reply in support of its motion for summary judgment. The Court finds that the defendants have requested the extension in good faith and not for the purpose of delay. Moreover, the Court recently granted the plaintiff's three-week motion for an extension of time to file its opposition memorandum. Defendants shall therefore file their reply by no later than January 9, 2019. Signed by Judge Emmet G. Sullivan on 12/19/2018. (lcegs3) (Entered: 12/19/2018)
12/19/2018		Set/Reset Deadlines: Defendants Reply due by 1/9/2018. (mac) (Entered: 12/19/2018)
01/07/2019	<u>10</u>	MOTION to Stay <i>in Light of Lapse in Appropriations</i> by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE (Hendry, Melanie) (Entered: 01/07/2019)
01/09/2019		MINUTE ORDER granting <u>10</u> motion to stay in light of lapse of appropriations. Defendants are directed to notify the Court when appropriations are restored or if a continuing resolution is enacted. Signed by Judge Emmet G. Sullivan on 1/9/2019. (lcegs3) (Entered: 01/09/2019)
02/08/2019		MINUTE ORDER. The Court has accepted Cox v. Executive Office of U.S. Attorneys, Civil Action No. 18-2657 (the "Cox Action") as related to this action. On November 13, 2018, the U.S. District Court for the Southern District of Illinois transferred the Cox Action to this Court under 28 U.S.C § 1404(a) because "venue is closer to the records requested and it is likely that [this Court] will want to consolidate the cases so that both [actions] can be efficiently handled." Cox Order, No. 17-cv-611 (S.D. Ill. Nov. 13, 2018), ECF No. 62. To date, government counsel and Mr. Klayman have not filed notices of appearance in the Cox Action or a notification of related action in this action. See LCvR 83.2; see also LCvR 40.5(b)(3). The Court DIRECTS the parties to show cause why the Cox Action should not be consolidated under this action by no later than February 14, 2019. Signed by Judge Emmet G. Sullivan on 2/8/2019. (lcegs3) (Entered: 02/08/2019)
02/08/2019		Set/Reset Deadlines: Parties to Show Cause due by 2/14/2019. (mac) (Entered: 02/08/2019)
02/11/2019	<u>11</u>	NOTICE OF RELATED CASE by FREEDOM WATCH, INC.. Case related to Case No. 18-cv-2657. (Klayman, Larry) (Entered: 02/11/2019)
02/14/2019	<u>12</u>	RESPONSE TO ORDER OF THE COURT re Order,,, filed by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE. (Hendry, Melanie) (Entered: 02/14/2019)
02/14/2019	<u>13</u>	RESPONSE TO ORDER OF THE COURT re Order,,, of February 8, 2019 filed by FREEDOM WATCH, INC.. (Klayman, Larry) (Entered: 02/14/2019)
02/14/2019		MINUTE ORDER. In view of <u>12</u> Defendant's Response and <u>13</u> Plaintiff's Response to the Court's February 8, 2019 Order to Show Cause, the Court hereby consolidates Cox

		v. Executive Office of U.S. Attorneys, Civil Action No. 18–2657 (the "Cox Action") under this action pursuant to Federal Rule of Civil Procedure 42(a)(2). The parties are directed to file a joint status report by no later than March 1, 2019, proposing a schedule for further proceedings. The Clerk of Court is directed to consolidate Civil Action No. 18–2657 under Civil Action No. 18–2116, and close Civil Action No. 18–2657. All future filings shall be made in this action. Signed by Judge Emmet G. Sullivan on 2/14/2019.(lcegs3) (Entered: 02/14/2019)
02/15/2019		Set/Reset Deadlines: Joint Status Report due by 3/1/2019. (mac) (Entered: 02/15/2019)
03/01/2019	<u>14</u>	STATUS REPORT by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE. (Graham–Oliver, Heather) (Entered: 03/01/2019)
03/05/2019		MINUTE ORDER. In view of <u>14</u> Defendants' Status Report, the Court orders the parties to show cause why Mr. Klayman should not be sanctioned or held in contempt for his failure to comply with the Court's February 14, 2019 Minute Order by no later than March 8, 2019. See <i>Al–Adahi v. Obama</i> , 672 F. Supp. 2d 114, 117 (D.D.C. 2009) (holding a party in civil contempt for failure to comply with an order). The Court notes that Mr. Klayman has previously failed to comply with the Court's January 3, 2019 Order in Civil Action No. 18–88. Mr. Klayman is strongly advised to meet and confer with government counsel and file a joint status report by no later than March 8, 2019, as that will have a material bearing on whether the Court imposes sanctions or holds him in contempt. Signed by Judge Emmet G. Sullivan on 3/5/2019. (lcegs3) (Entered: 03/05/2019)
03/06/2019		Set/Reset Deadlines: Parties To Show Cause due by 3/8/2019. Joint Status Report due by 3/8/2019. (mac) (Entered: 03/06/2019)
03/08/2019	<u>15</u>	Joint STATUS REPORT by FRANCIS SCHAEFFER COX, FREEDOM WATCH, INC.. (Klayman, Larry) (Entered: 03/08/2019)
03/08/2019	<u>16</u>	RESPONSE TO ORDER TO SHOW CAUSE by FRANCIS SCHAEFFER COX, FREEDOM WATCH, INC. . (Klayman, Larry) (Entered: 03/08/2019)
03/11/2019		MINUTE ORDER. The Court directs Defendants to comply with the Court's March 5, 2019 Order to Show Cause by no later than March 13, 2019. The parties are strongly advised to adhere to the Court's Orders in this matter. See <i>Al–Adahi v. Obama</i> , 672 F. Supp. 2d 114, 117 (D.D.C. 2009) (holding a party in civil contempt for failure to comply with an order). Signed by Judge Emmet G. Sullivan on 3/11/2019. (lcegs3) (Entered: 03/11/2019)
03/12/2019		Set/Reset Deadlines: Defendants Show Cause due by 3/13/2019. (mac) (Entered: 03/12/2019)
03/13/2019	<u>17</u>	RESPONSE TO ORDER TO SHOW CAUSE by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE . (Van Horn, Daniel) (Entered: 03/13/2019)
03/13/2019		MINUTE ORDER. In view of <u>15</u> Joint Status Report, the parties shall submit a joint proposed briefing schedule for the consolidated action by no later than March 29, 2019. The Court grants Defendants' request to file a consolidated Reply and Motion for Summary Judgment. The Court declines Plaintiffs' request for a status conference at this time. In light of <u>16</u> Plaintiffs' Response and <u>17</u> Defendants' Response, the Court declines to impose sanctions. The parties are cautioned that any future failures to comply with the Court's Orders will not be treated lightly. Signed by Judge Emmet G. Sullivan on 3/13/2019. (lcegs3) (Entered: 03/13/2019)
03/14/2019		Set/Reset Deadlines: Joint Proposed Briefing Schedule due by 3/29/2019 (mac) (Entered: 03/14/2019)
03/29/2019	<u>18</u>	PROPOSED BRIEFING SCHEDULE (<i>Joint</i>) by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE. (Hendry, Melanie) (Entered: 03/29/2019)

03/29/2019		MINUTE ORDER. In view of the parties' <u>18</u> Joint Proposed Briefing Schedule, the parties shall adhere to the following briefing schedule: (1) Defendants shall file their Consolidated Reply (Freedom Watch Action) and Motion for Summary Judgment (Count I in Cox Action) by no later than July 31, 2019; (2) Plaintiff Cox shall file his Opposition to the Summary Judgment Motion by no later than August 30, 2019; and (3) Defendants shall file their Reply to Plaintiff Cox's Opposition to the Summary Judgment Motion by no later than September 20, 2019. Signed by Judge Emmet G. Sullivan on 3/29/2019. (lcegs3) (Entered: 03/29/2019)
04/01/2019		Set/Reset Deadlines: Defendants Consolidated Reply (Freedom Watch Action) And Motion For Summary Judgment (Count 1 in Cox Action) due by 7/31/2019. Plaintiff Cox Opposition To The Summary Judgment Motion due by 8/30/2019. Defendants Reply To Plaintiff Cox's Opposition To The Summary Judgment Motion due by 9/20/2019. (mac) (Entered: 04/01/2019)
04/29/2019		MINUTE ORDER. The Court has broad authority to control the disposition of the cases on its docket. E.g., Clinton v. Jones, 520 U.S. 681, 706 (1997); Landis v. N. Am. Co., 299 U.S. 248, 254–55 (1936). The Court HEREBY STAYS the briefing schedule until the resolution of Mr. Cox's request for this Court to consider his Opposition to Defendants' Motion for Summary Judgment and Motion to Dismiss in the Cox Action, No. 18–cv–2657. See, e.g., W. Virginia ex rel. Morrissey v. U.S. Dep't of Health & Human Servs., No. CV 14–1287 (RBW), 2014 WL 12803229, at *1 (D.D.C. Nov. 3, 2014) (staying summary judgment briefing, "in the interest of judicial economy," pending the resolution of a motion); Furniture Brands Int'l Inc. v. U.S. Int'l Trade Comm'n, No. 11–202, 2011 WL 10959877, at *1 (D.D.C. Apr. 8, 2011) ("[St]aying further briefing of the plaintiff's summary judgment motion will allow the parties to avoid the unnecessary expense, the undue burden, and the expenditure of time to brief a motion that the Court may not decide."). Signed by Judge Emmet G. Sullivan on 4/29/2019. (lcegs3) (Entered: 04/29/2019)
05/17/2019	<u>19</u>	RESPONSE to Plaintiffs' Resonse to Order of the Court filed by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE. (Hendry, Melanie) (Entered: 05/17/2019)
05/20/2019		MINUTE ORDER. In view of <u>19</u> Defendants' Response that states Defendants do not oppose Mr. Cox filing his Opposition to Defendants' Motion for Summary Judgment and Motion to Dismiss, the Court hereby lifts the stay on the briefing schedule. Defendants shall respond to the claims set forth in Mr. Cox's Opposition to Defendants' Motion for Summary Judgment and Motion to Dismiss. See Cox Action, No. 18–cv–2657, ECF No. 70–1. Signed by Judge Emmet G. Sullivan on 5/20/2019. (lcegs3) (Entered: 05/20/2019)
07/26/2019	<u>20</u>	MOTION to Vacate <i>Briefing Schedule</i> by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE (Hendry, Melanie) (Entered: 07/26/2019)
08/07/2019	<u>21</u>	NOTICE OF SUBSTITUTION OF COUNSEL by John Moustakas on behalf of BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE Substituting for attorney Melanie Hendry (Moustakas, John) (Entered: 08/07/2019)
08/12/2019		MINUTE ORDER treating as opposed and granting over objection <u>20</u> Defendants' Motion to Vacate Briefing Schedule. The parties shall file a joint status report by no later than August 26, 2019, informing the Court of the status of the FBI's processing of the audio and video files responsive to Plaintiffs' FOIA requests and including a declaration setting forth its proposed processing schedule. The parties shall file a proposed order with each motion, opposition, and joint status report. Signed by Judge Emmet G. Sullivan on 8/12/2019. (lcegs3) (Entered: 08/12/2019)
08/26/2019	<u>22</u>	Joint STATUS REPORT and Proposed Order by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration Exhibit 1, # <u>2</u> Exhibit Exhibit A–K)(Moustakas, John) (Entered: 08/26/2019)

08/27/2019		MINUTE ORDER. Upon consideration of the <u>22</u> Joint Status Report, the [22-1] Declaration of David M. Hardy, and the exhibits attached thereto, the Court adopts Defendants' production schedule of the media files responsive to Plaintiffs' FOIA requests substantially for the reasons set forth in Defendants' proposal. The Court denies Plaintiffs' request for a status conference at this time. It is hereby ORDERED that Defendant FBI shall process at least (a) 15 minutes of video records, (b) 30 minutes of audio records, or (c) 500 high quality photographs (or some combination thereof) per month until such time as all of the media files have been processed and the non-exempt, responsive records released. It is FURTHER ORDERED that the parties shall submit their Joint Status Report apprising the Court of the status of the processing and release of the Media Files beginning on November 26, 2019, and every 90 days thereafter. Signed by Judge Emmet G. Sullivan on 8/27/2019. (lcegs3) (Entered: 08/27/2019)
08/28/2019		Set/Reset Deadlines: Joint Status Report due by 11/26/2019. (mac) (Entered: 08/28/2019)
11/26/2019	<u>23</u>	Joint STATUS REPORT by BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, EXECUTIVE OFFICE OF U.S. ATTORNEYS, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE. (Moustakas, John) (Entered: 11/26/2019)